Missouri Court of Appeals
Southern District

In Division

DIXIE SLEIGHT, et al., Plaintiffs-Appellants, v. BK&M, LLC, et al., Defendants-Respondents.	Case Number SD38733 **Filed: July 2, 2026**

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Derek A. Ankrom, Judge

AFFIRMED

This case arose when a group of neighborhood residents ("Appellants"),[1] sued BK&M, LLC ("BK&M") requesting the Circuit Court of Greene County, Missouri ("trial court"), "declare and determine the rights of the parties with respect to those certain covenants and restrictions" on certain lots in the University Heights subdivision in the

[1] The parties to this appeal are Dixie Sleight, Barbara Susan Robinson, Anna Squires, Rod Dixon, Lisa Dixon, Rebecca Gilmore, Mark Wealand, Steve Waddell, and Virginia Olson, all of whom own one or more lots in the University Heights subdivision either individually or in a representative capacity. Plaintiffs Erinn and Doug Johnson were plaintiffs in the original lawsuit but did not join the appeal. Mark and Courtney Fletcher were allowed to intervene in the lawsuit as plaintiffs, but are not parties to the appeal.

city of Springfield ("University Heights") in an attempt to stop development at the corner of Sunshine Street and National Avenue.[2] Appellants' lawsuit claimed, based on deed restrictions listed by Eloise Mackey ("Mrs. Mackey") in the first deeds conveyed when she originally sold the individual lots after platting University Heights in 1925, that BK&M's efforts to build a mixed-use development of shopping, restaurants, offices, and apartments was prohibited by the restrictive covenants of University Heights, which prohibit building in the neighborhood to private residences, among other things.

After a two-day bench trial, the trial court found that the deed-specific restrictions had been waived by Appellants and were therefore unenforceable against BK&M. The trial court further found that Appellants themselves were in widespread non-compliance with what the trial court determined that Mrs. Mackey intended to be non-severable deed restrictions. Specifically, the trial court found that none of the Appellants were in compliance with a covenant that restricted building on the lots to a single private residence, or with a covenant that restricted building material to brick, stone, or stucco. The trial court also found that all landowners in University Heights had acquiesced in the violations by their inaction in the face of widespread violations of the deed-specific restrictions. As such, the trial court determined that Appellants could not enforce any of the restrictions against BK&M on any of the lots that BK&M owns.

[2] University Heights consists of 156 lots bounded on the south side by East Sunshine Street, the north side by East Portland Street, the west side by Kimbrough Avenue, and the east side by South National Avenue.

Appellants challenge these findings in five points on appeal. We find no merit in Appellants' Points I and II, decline to address Points III and IV for failure to establish the necessary steps for an against-the-weight-of-the-evidence challenge, and decline to address Point V because our decisions on Points I through IV render it moot. The trial court's judgment is affirmed.

Factual Background and Procedural History

In May of 1923, the "Springfield Leader" newspaper began running advertisements for 156 lots for sale in University Heights, a neighborhood which the newspaper stated was "amply restricted." It is unknown who owned the land at the time of the advertisements.

On June 13, 1925, Mrs. Mackey recorded the plat for "University Heights, an Addition to the City of Springfield, Greene Co., Missouri" (the "Plat"). The Plat did not impose any restrictive covenants on the lots it created. Instead, the Plat reflected that all of the restrictive covenants that existed in University Heights were deed-specific.[3] Mrs. Mackey, that same day, also granted a Deed of Trust to Alfred Page, Trustee, which secured the payment of certain promissory notes. The Deed of Trust encumbered some of the lots on the Plat.

[3]*See* ***Wheeler v. Sweezer***, 65 S.W.3d 565, 569 (Mo. App. W.D. 2002):

> Developers of residential property can use one of three methods to create binding covenants which restrict the use of the property and benefit all future landowners: 1) by placing such restrictions in the deed to the property; 2) by recording the covenant terms; or 3) by developing and selling the land pursuant to a common plan or scheme of improvement.

Between June 15, 1925, and March 1, 1930, Mrs. Mackey granted 105 deeds for property within University Heights. The deeds themselves contained various restrictions and combinations of restrictions, such as setback restrictions, cost requirements for construction, garagette[4] restrictions, and/or restrictions on building upon individual lots to "a private residence" or "a private dwelling[.]" Other lots contained no restrictions.

Around August 1930, Mrs. Mackey had defaulted on her payment of the promissory note, and on August 28, 1930, the Greene County Sheriff sold 41 of the original 156 lots to Doris Lewelling at a public auction. The sale included lots 2, 6, 25, 30, 41, 48, 49, 52-56, 67-70, 73, 74, 76, 84, 90, 93, 100, 101, 107, 110, 121, 122, 126-129, 132-135, 137-139, 142, and 143. The "Sheriff's Deed Under Trust Deed Sale" conveying the lots did not contain any deed restrictions. Mrs. Mackey subsequently conveyed additional lots or partial lots within the Plat without any deed restrictions, and no evidence was presented at trial as to the original conveyance of many of the other lots – including whether Mrs. Mackey ever even owned those lots.

As will be discussed further herein, there are four main covenants at issue in this case. In keeping with the language used by the trial court, we will refer to the covenants as follows: first, a "Single Private Residence Covenant," which prohibits the building of anything other than "a private residence" or "a private dwelling" on a lot. The second is referred to as a "Materials Covenant" which is a covenant that requires a building to be constructed of brick, stone, or stucco. The third is referred to as a "Setback Covenant"

[4] The trial court defined the term "garagette," according to Appellants' evidence, as "[a]n apartment either converted from a garage or next to or over a garage."

and requires a building to be set back a specific distance from the front of the property line. These covenants are sometimes referred to collectively as "the Construction Covenants," as they regulate the character and location of the structures that can be constructed on the land. A fourth covenant is referred to as the "Garagette Covenant" and it prohibits the use of a garagette as a place of abode.[5]

Beginning in approximately 2020, BK&M began purchasing property in University Heights, and now owns the entirety of lots 10, 11, 12, 13, 28, the East 70 feet of Lot 14, and the East 50 feet of Lot 29.[6] As to Appellants' lots at issue in this case, we recite the deed restrictions on each lot as stated in the trial court's judgment ("Judgment"):

a. Plaintiff Sleight

> The Original Deed for Lot 27, dated December 7, 1929, from [Mrs.] Mackey to Kenneth and Arana Lloyd, conveyed "[a]ll of Lot twenty seven (27)," and provides:
>
> > Nothing to be built thereon except a private residence of brick, stone or stucco construction, to set back not less than thirty feet from the front property line ….
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> *See* Exhibit 35. At some point after this Original Deed, two homes were built on Lot 27 and the property was split into two parcels. *See id.* Plaintiff Sleight owns the East half of Lot 27, commonly known as 1124 E. University Street. *See id.* Plaintiff Sleight's home is partially constructed with siding, and is not exclusively built with brick, stone, or stucco. *See* Exhibit 208. A separate home, also not exclusively constructed of brick,

[5] The trial court found no evidence presented that there was waiver of the Garagette Covenant, but the Garagette Covenant is not directly at issue in this appeal given the trial court's rulings on the other restrictive covenants.

[6] The chain-of-title from each of these original conveyances to current-day was not presented into evidence.

stone, or stucco, and a detached shed have been built on the West half of Lot 27, owned by Plaintiffs Dixon. *See id.*

b. Plaintiff Robinson

The Original Deed for Lot 62, dated May 18, 1927, from [Mrs.] Mackey to Bessie Ferguson, conveyed "[a]ll of Lot #62," and provides:

> Nothing to be erected thereon except a private residence of brick, stone or stucco construction … and to set back not less than 30 feet from the front property line. The purchaser hereby agrees that she will not erect a garagette on this property as a place of abode, even temporary.

See Exhibit 32. The Original Deed for Lot 59, dated June 10, 1927, from [Mrs.] Mackey to Albert and Mary Eckert, conveyed "[a]ll of Lot[] … 59," and provides:

> Nothing to be erected on … lot[] 59 … except a private residence of brick[,] stone or stucco construction … to set back not less than 30 feet from the front property line. Parties of the second part hereby agree that they will not erect a garagette … as a place of abode, even temporary.

See id. At some point after these Original Deeds, the West 25 feet of Lot 59 was split off from the remainder of that lot and, in essence, combined with the East half of Lot 62. *See* Exhibit 32; Exhibit 34. Plaintiff Robinson now owns the East half of Lot 62 and the West 25 feet of Lot 59, and her home, commonly known as 1010 E. University Street, was partially erected on both such original Lots. *See* Exhibit 32; Exhibit 34. Due to the lot-splitting, three residences are constructed across Lots 59 and 62. Plaintiff Robinson's home is partially constructed with siding, and is not exclusively constructed of brick, stone, or stucco. *See* Exhibit 208.

Plaintiff Robinson also owns the properties commonly known as 1001 E. Sunshine Street and 1009 E. Sunshine Street, which are two residences constructed on Lot 61. *See* Exhibit 208. The Original Deed for Lot 61, dated June 15, 1925, from [Mrs.] Mackey to E.S. Carter, conveyed "[a]ll of Lot number sixty-one (61)," and provides:

> Nothing to be erected thereon except a private residence of brick, stone, or stucco construction … to set back not less than 30 feet from the front property line. The purchaser

> hereby agrees that he will not erect a garagette on this property as a place of abode, even temporary.

See Exhibit 333. One of the residences on Lot 61 is partially constructed with siding, and is not exclusively constructed of brick, stone, or stucco. *See* Exhibit 208.

c. Plaintiffs Johnson

As noted above, the Original Deed for Lot 59, dated June 10, 1929, from [Mrs.] Mackey to Albert and Mary Eckert, conveyed "[a]ll of Lot[] … 59," and provides:

> Nothing to be erected on … lot[ ] 59 … except a private residence of brick[,] stone or stucco construction … to set back not less than 30 feet from the front property line. Parties of the second part hereby agree that they will not erect a garagette … as a place of abode, even temporary.

See Exhibit 32. As discussed above, a portion of Lot 59 was later split off and conveyed separately. *See id.* The Larry Douglas Johnson Revocable Trust Dated August 27, 2004, now owns Lot 59, except the West 25 feet thereof. *See* Exhibit 32. The West 25 feet of Lot 59 is owned by Plaintiff Robinson, and part of Plaintiff Robinson's residence was built on this portion of Lot 59. Doug and Erinn Johnson live in a home, commonly known as 1020 E. University Street, located on the Douglas Trust's portion of Lot 59. The Johnson home is partially constructed with siding, and a detached garage, which is fully constructed with siding, has been erected on the Douglas Trust's portion of Lot 59. *See* Exhibit 209.

d. Plaintiff Squires

The Original Deed for Lot 43, dated February 6, 1926, from [Mrs.] Mackey to G.H. and Blanche Berry, conveyed "[a]ll Lot 43," and provides:

> Restricted to construction of brick, stone, or stucco … and to set back thirty feet from the front property line.

See Exhibit 36. At some point after this Original Deed, two homes were built on Lot 43, and the property was split into two parcels. *See* Exhibit 208. Anna M. Squires, Trustee of the Anna M. Squires Revocable Trust Under Trust Agreement Dated September 3, 1999, now owns the East

half of Lot 43. *See* Exhibit 36. Plaintiff Squires lives in a home constructed upon the East half of Lot 43, commonly known as 1056 E. University Street. *See id.* A separate home and detached shed have been constructed upon the West half of Lot 43. *See* Exhibit 208.

e. Plaintiffs Dixon

The Original Deed for Lot 27, dated December 7, 1929, from [Mrs.] Mackey to Kenneth and Arana Lloyd, conveyed "[a]ll of Lot twenty seven (27)," and provides:

> Nothing to be built thereon except a private residence of brick, stone or stucco construction, to set back not less than thirty feet from the front property line ….

See Exhibit 30. At some point after this Original Deed, two homes were built on Lot 27 and the property was split into two separate parcels. *See* Exhibit 208. Plaintiffs Rodney and Lisa Dixon own the West half of Lot 27, upon which their residence, commonly known as 1118 E. University Street, has been built. *See* Exhibit 30. Plaintiff Sleight's residence sits on the East half of Lot 27.

Lisa Dixon testified that she believes the restrictions in the Original Deed for Lot 27 "prevent **any construction** other than a personal family residence," and Rodney Dixon testified that he believes the restrictions prohibit the construction of "**anything** other than a private residence." The Dixons, nevertheless, built a detached shed constructed of concrete and siding behind their home after they had actual knowledge of the restrictions contained in the Original Deed for Lot 27.

f. Plaintiff Gilmore

The Original Deed for Lot 14, dated July 28, 1925, from [Mrs.] Mackey to Floyd Roberts, conveyed "[a]ll of Lot Fourteen (14)," and provides:

> Nothing to be erected thereon excepting a private residence of brick, stone or stucco construction … and to set back not less than 30 feet from the front property line. The Purchaser hereby agrees that he will not erect a garagette on this lot as a place of abode even temporary.

See Exhibit 31. At some point after this Original Deed, two homes were built on Lot 14 and the property was split into two separate parcels. *See*

Exhibit 208. Plaintiff Rebecca Gilmore and her husband Stuart Gilmore own the West 80 feet of Lot 14 and the home erected thereon, now known as 1130 E. University Street; the remainder of Lot 14 is owned by BK&M. *See* Exhibit 31. Plaintiff Gilmore has on her portion of Lot 14, in addition to her residence, a detached two-car garage and two pre-fabricated sheds not constructed of brick, stone, or stucco.

g. Plaintiffs Wealand & Waddell

The Original Deed for Lot 95, dated May 18, 1927, from [Mrs.] Mackey to Bessie Ferguson, conveyed "[a]ll of Lot #95," and provides:

> Nothing to be erected thereon except a private residence of brick, stone or stucco, construction … to set back not less than 30 feet from the front property line. The purchaser hereby agrees that she will not erect a garagette on this property as a place of abode, even temporary.

See Exhibit 37. At some point after this Original Deed, two homes were built on Lot 95 and the property was split into two separate parcels. *See* Exhibit 208. Steven Perry Waddell and Mark Anthony Wealand, Trustees of the Steven Perry Waddell and Mark Anthony Wealand Revocable Living Trust dated March 9, 2018 (the "Wealand/Waddell Trust"), now own the East half of Lot 95. *See* Exhibit 37. Plaintiffs Wealand and Waddell live in a home erected on the property owned by the Wealand/Waddell Trust, commonly known as 911 E. University Street. *See* Exhibit 37. The West half of Lot 95 has a separate home and detached shed constructed upon it. *See* Exhibit 208.

h. Plaintiff Olson

The Original Deed for Lot 15, dated January 18, 1927, from [Mrs.] Mackey to Erma Leard, conveyed "[a]ll of Lot fifteen (15)" and provides:

> Nothing to be erected thereon except a private residence of brick, stone, or stucco construction … to set back not less than 30 feet from the front property line. The purchaser hereby agrees that she will not erect a garagette on this property as a temporary place of abode.

See Exhibit 33. At some point after this Original Deed, Lot 15 was split into two separate parcels. *See id.* Plaintiff Virginia Olson owns the West half of Lot 15 and the home erected thereon, commonly known as 1133 E.

University Street. *See id.* Plaintiff Olson's home is partially constructed with siding. *See* Exhibit 209. The East half of Lot 15, not owned by Plaintiff Olson, has a separate home and a detached shed erected upon it. *See* Exhibit 208.

i. Plaintiffs Fletcher

The Original Deed for Lot 63, dated December 27, 1926, from [Mrs.] Mackey to Thomas and Ruby Mary Roper, conveyed "[a]ll of Lot Sixty-three (63)," and provides:

> Nothing to be erected thereon except a private residence of brick, stone of [sic] stucco construction … to set back not less than 30 feet from the front property line. Parties of the second part further agree that they will not erect a garagette on this lot as a place of abode even temporary.

See Exhibit 301. At some point after this Original Deed, two residences were built upon Lot 63 and the property was split into two separate parcels. *See id.*; Exhibit 208. Plaintiffs Fletcher own the East half of Lot 63 and the home erected upon it, which is partially constructed with siding. *See* Exhibit 301. The West half of Lot 63 has another residence constructed on it, which is also partially constructed with siding. *See* Exhibit 208.

Despite the restrictions on the individual deeds, the evidence at trial showed the following:

While Mrs. Mackey originally platted University Heights as 156 lots, most of the original lots had been subdivided and more than one home built on each lot. At the time of trial, University Heights consisted of over 300 homes on those original 156 lots. In addition, at least 69 other structures, aside from homes, had been built on the lots, including free-standing sheds or garages and fences. There were well over 100 homes constructed of material other than brick, stone, or stucco, or sided at least partially with siding.

In Count I of their Amended Petition, Appellants sought a declaration that they have a legally protected interest in enforcing the deed restrictions on all lots in University Heights, including those owned by BK&M. Count II sought a judicial declaration that certain lots owned by BK&M were subject to deed restrictions that prevented them from building anything other than a private residence on the lot (including a commercial building), and prevented BK&M from using a garagette as an abode. Count III sought a declaration that BK&M's application to change the zoning of applicable lots was moot.

The trial court found that the Single Private Residence Covenant, the Materials Covenant, and the Setback Covenant were not enforceable by Appellants against the lots owned by BK&M, and that Appellants were not entitled to any further relief against BK&M with respect to their efforts to enforce said covenants. Appellants appeal.

Standard of Review

Our standard of review from a bench-tried case is well-established:

> A judgment entered following a bench trial may be reversed if no substantial evidence supports the judgment, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). "These are distinct claims[,]" and each requires a distinct analysis. *Ivie v. Smith*, 439 S.W.3d 189, 199 n.11 (Mo. banc 2014).

Weeks v. City of St. Louis, 721 S.W.3d 873, 876 (Mo. banc 2025).

Analysis

Point I: Appellants Failed to Challenge the Trial Court's Finding that Mrs. Mackey Intended the Covenants to be Non-Severable

In their first point on appeal, Appellants claim that:

> The trial court erred in holding the Covenants are unenforceable because the trial court erroneously applied the law of enforceability of deed covenants in that the trial court deemed waiver of one covenant sufficient to constitute a waiver of each separate and distinct covenant.

Appellants' argument, however, fails to challenge the trial court's finding with respect to Mrs. Mackey's intent as the drafter, and this failure is fatal to their claim.

> "[A] restrictive covenant is a private contractual obligation generally governed by the same rules of construction applicable to any covenant or contract." *Kling v. Taylor-Morley, Inc.*, 929 S.W.2d 816, 819 (Mo. App. [E.D.] 1996). Thus, "[t]he principles of contract law apply when interpreting an [i]ndenture." *Arbors at Sugar Creek Homeowners Ass'n v. Jefferson Bank & Tr. Co.*, 464 S.W.3d 177, 183 (Mo. banc 2015).

Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 280 (Mo. banc 2019). Specifically:

> In determining a covenant's plain meaning, "[r]estrictive covenants are examined in the context of the entire instrument and not in just a single clause." *Kauffman v. Roling*, 851 S.W.2d 789, 792 (Mo. App. [W.D.] 1993).
>
> > The cardinal rule of contract interpretation, and thus for the interpretation of a restrictive covenant, is that the party's intentions must be ascertained and given effect. ... The parties' intent can be determined by inquir[ing] into the purpose sought to be accomplished by the restrictive covenant. Each contractual provision is construed in harmony with the others to give each provision a reasonable meaning and avoid an interpretation that renders some provisions useless or redundant.
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> *Blue Ridge Bank & Trust Co. v. Trosen*, 221 S.W.3d 451, 459 (Mo. App. W.D. 2007) (quotations and citations omitted) (alteration in original); *accord Andrews*, 163 S.W.2d at 1028 (courts will interpret restriction "in the light of the entire context of the instrument containing the restrictions").

Id. at 283.

"Whether a contract is entire or severable is a question of intention, to be gathered from the language used and the subject matter of the agreement." ***Big River Hills Ass'n, Inc. v. Altmann***, 747 S.W.2d 738, 742 (Mo. App. E.D. 1988). "Whether a contract is severable ... depends on the circumstances of the case and is largely a question of the parties' intent." ***Eaton v. CMH Homes, Inc.***, 461 S.W.3d 426, 436 (Mo. banc 2015) (quoting ***Woods v. QC Fin. Servs., Inc.***, 280 S.W.3d 90, 99 (Mo. App. E.D. 2008)). Finally, "restrictive covenants are to be strictly construed as the law favors untrammeled use of real estate." ***Mackey v. Griggs***, 61 S.W.3d 312, 315 (Mo. App. S.D. 2001).

Appellants argue that the trial court erred in finding that the Materials Covenant and Setback Covenant were non-severable from the Single Private Residence Covenant and that, having waived the first two covenants through non-enforcement, the Single Private Residence Covenant was not enforceable. According to Appellants, waiver or abandonment of one (or more) of these covenants does not constitute a waiver or abandonment of them all, and the trial court was required to determine only whether the purpose of scheme of the Single Private Residence Covenant remains in effect, which Appellants argue that it does.

BK&M argues that Appellants have failed to challenge the trial court's finding that it was Mrs. Mackey's intent that the three Construction Covenants were non-severable, and that such a failure is fatal to their claim, because it is the intent of the grantor that controls. We agree with BK&M.

As to Mrs. Mackey's intent in crafting the Construction Covenants, the trial court found as follows:

> The Single Private Residence Covenant, the Materials Covenant, and the Setback Covenant (the "Construction Covenants") are related restrictions. They all regulate the character and location of the structure(s) to be built upon a specified land parcel originally conveyed by Mrs. Mackey. Where these restrictions all appear in an Original Deed, they appear in a single sentence. Where more than one, but not all, of these restrictions appear in an Original Deed, they appear in a single sentence. Where all of the Construction Covenants are used together, the Single Private Residence [Covenant] establishes the character of the structure permitted, the Materials Covenant establishes what materials can be used to construct the structure, and the Setback Covenant establishes where the structure can be erected. Admittedly, the imposition of these covenants on land deeded by Mrs. Mackey cannot be reasonably characterized as uniform; Mrs. Mackey sometimes imposed none, one, two, or all three of the Construction Covenants. However, regardless of whether all of [sic] Construction Covenants appear in a given Original Deed, where any more than one of them appear they are always connected by their inclusion in a single sentence, and by their purpose of imposing character and location restrictions on the structure(s) permitted to be built. **In the Court's view, Mrs. Mackey intended these restrictions, where more than one was used, to be tied together. Accordingly, the Court finds and determines that the Construction Covenants, where more than one of them appear in an Original Deed, are non-severable**. As relevant to the BK&M Lots, more than one of the Construction Covenants appear in each of the Original Deeds. Being non-severable, if any one of the Construction Covenants appearing in the Original Deed is unenforceable against BK&M with respect to such Lot(s), the remainder are rendered unenforceable as a matter of law.
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> The Garagette Covenant, on the other hand, almost always appears in a separate sentence, and clearly appears to serve a different purpose than the three Construction Covenants. Instead of regulating what could be built, *per se*, it regulates only the **use** of what was built. As drafted, the covenant does not prevent the erection or construction of a garagette; a purchaser could erect a garagette in the construction of their residence, provided it was not used as a place of abode.[]
>
> Accordingly, the Court finds that (a) Mrs. Mackey intended the Construction Covenants to be non-severable, and (b) the Garagette Covenant is severable.

(First emphasis added; footnote omitted.)

We agree with BK&M that whether or not portions of a contract are severable is largely dependent on the drafting party's intent. ***Eaton***, 461 S.W.3d at 436. Having failed to challenge the trial court's finding that Mrs. Mackey intended for the Construction Covenants to "to be tied together[,]" we must accept that finding as true. ***STRCUE, Inc. v. Potts***, 386 S.W.3d 214, 219 (Mo. App. W.D. 2012) (appellant's failure to challenge finding that would independently support the conclusion reached by the trial court is fatal to the appeal). Appellants' first point is denied.

Point II: Subdivision of the Lots Constituted a Waiver of the Non-Severable Covenants at Issue

In their second point on appeal, Appellants contend that, because the trial court improperly found that the Construction Covenants are non-severable, it also improperly found subdivision of certain lots in University Heights constituted waiver of the Covenants. However, having already found that the trial court properly determined that the Construction Covenants are non-severable, it necessarily follows that widespread violation of one Construction Covenant constitutes a waiver of them all. We discuss herein why the trial court properly found that subdivision of many of the lots in University Heights constituted a violation of the Single Private Residence Covenant, thereby violating the additional, non-severable Construction Covenants.

This point concerns the trial court's findings with respect to the following covenant language contained in the deeds: "**All** of [Lot or partial Lot being conveyed] …[,] **Nothing** to be erected thereon, except **a private residence**…." The trial court found this language to mean that nothing can be erected on any lot except a private residence.

The trial court further explained that this meant Mrs. Mackey had restricted each parcel to the building of one private residence: only one private residence per originally deeded lot. The trial court concluded, therefore, that subdivision of the original lots into multiple smaller lots, and the erection of additional structures on those lots, such as fences, sheds, and garages, was a violation of the covenant and therefore constituted waiver of the covenants. The trial court found the waiver to be widespread in this case, as none of the Appellants were in compliance with the Single Private Residence Covenant, and some had erected structures other than a private residence.

To support their argument that Mrs. Mackey intended for the lots to be subdivided, Appellants cited Springfield newspaper advertisements, circa 1920s, which the trial court admitted into evidence (Exhibit 2) over BK&M's objection,[7] and expressly found it not credible for many reasons.[8] We have reviewed the same advertisements and find

[7] The trial court sustained the objection as to hearsay, but admitted Exhibit 2, "for the purpose essentially to establish that these [advertisements] ran, but not for the content of them."

[8] The trial court noted in its Judgment:

> [Appellants] offered into evidence newspaper advertisements from 1923-1929, which the Court received over BK&M's objection. Upon considering such advertisements, the Court does not find them to be credible evidence of the intentions of Mrs. Mackey because, inter alia: (1) they do not appear to have been placed, or otherwise adopted, by Mrs. Mackey, instead they were placed by "University Heights Company" and/or "State Savings Trust Company, Sales Agents," and the relationship between these entities and Mrs. Mackey was not credibly established; (2) they contain demonstrably false statements, including a statement in May 1923 that "Many Lots Already Sold," despite the subdivision plat not having been filed and no sales having occurred of any platted lots; and (3) they are replete

Appellants' argument unavailing on the issue of Mrs. Mackey's intent with respect to subdivision of the lots at issue. For one, Missouri courts often deem newspaper articles inadmissible hearsay under such circumstances. *See* ***Cantrell v. Superior Loan Corp.***, 603 S.W.2d 627, 644 (Mo. App. E.D. 1980) (finding that newspaper article offered to prove plaintiff's version of the conversation at issue was hearsay and no exception applied); ***Stallman v. Robinson***, 260 S.W.2d 743, 750 (Mo.1953) (stating that a newspaper article is not admissible as evidence of the facts stated therein). *See also* ***Thoroughbred Ford, Inc. v. Ford Motor Co.***, 908 S.W.2d 719, 736 (Mo. App. E.D. 1995) ("If the significance of an offered writing lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the offered utterance or writing is not hearsay."); ***In re Marriage of Wessel***, 199 S.W.2d 630, 631 (Mo. App. S.D. 1997) (citing ***Thoroughbred*** in discussion of newspaper ads being hearsay and noting a "newspaper article is admissible if not for the truth but that it was written"). While the trial court did admit the newspaper advertisements in this case, it found them not credible for the same reasons that other courts often refuse to admit them in the first place, i.e., they lack credibility and the relationship between the entity that placed the advertisement and Mrs. Mackey was not credibly established.

More importantly, we agree with the trial court that "a private residence" means one residence per lot, and to subdivide the lots and place more than one residence on each

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with sales puffery and ambiguity (including, as testified to by Plaintiffs' expert, references to the property being "restricted" not necessarily referring to the Deed Restrictions here at issue, but to imply discriminatory sales criteria).

original lot constitutes a violation of the Single Private Residence Covenant. Such an interpretation is supported by case law. *See* ***6 Clayton Terrace, LLC***, 585 S.W.3d at 282-83 (holding that, "because the 'one residence per lot' indenture provision, read in the context of the entire instrument, indicates it was intended to prevent construction of multiple residences per original lot, this language precludes 6 Clayton Terrace from subdividing Lot 6 into two lots to avoid the 'one residence per lot' restriction"). While we agree with the trial court that there is a dearth of Missouri law on this issue, we find that case law from other jurisdictions also supports this interpretation. *See also* ***Holladay Duplex Mgmt. Co., L.L.C. v. Howells***, 47 P.3d 104, 107 (Utah Ct. App. 2002) (rejecting the plaintiff's argument that the restrictive covenant which allowed "a one family dwelling house" meant that more than one home could be built on each lot because that reading would allow any number of homes to be built on each lot, which was an absurd result, and finding that "a" means "one single family home"); ***Flaks v. Wichman***, 260 P.2d 737, 740 (Colo. banc 1953) (where restriction stated that "no building shall be constructed … other than for private residence purposes," that restriction prevents construction of a duplex or of a double house); ***Walker v. Haslett***, 186 P. 622, 624 (Cal. Dist. Ct. App. 1919) (holding that a restrictive covenant limiting building to "a first-class private residence" means "'a' private residence – in the singular, not the plural"); ***Skillman v. Smathehurst***, 40 A. 855, 856 (N.J. Ch. 1898) (holding that "a private dwelling" is singular); ***Schadt v. Brill***, 139 N.W. 878, 881 (Mich. 1913) (the restriction in the deed prohibiting the purchaser from erecting on his lot any building "other than a dwelling house with the usual appurtenances," means "a single dwelling").

Having found that the trial court correctly determined that the restrictive covenant at issue here meant that nothing can be erected on any lot except a private residence, we must now turn to whether violation of that covenant was widespread enough to constitute waiver or abandonment of the same.

> Each case considering what acts or inactivity constitute a constructive waiver or abandonment of a restrictive covenant must be determined on its facts. *Forst* [*v. Bohlman*], 870 S.W.2d [442,] 446 [(Mo. App. E.D. 1994)]; *Virdon* [*v. Horn*], 711 S.W.2d [205,] 207 [(Mo. App. S.D. 1986)]. Waiver or abandonment may be based on failure to object to violations of a restriction. *Id.* at 448. A restriction upon land may be waived and abandoned by continuous acquiescence evidenced by persistent violations. *Connelly v. Schafer*, 837 S.W.2d 344, 347 (Mo.App. [W.D.] 1992). Such violations must be widespread to constitute waiver or abandonment. *Id. See also Ward* [*v. Prospect Manor Corp.*], 206 N.W. [856,] 859-860 [(Wis. 1926)] (holding that there was no waiver as to violations not affecting a lot owner or where violations are slight).

Stolba v. Vesci, 909 S.W.2d 706, 710 (Mo. App. S.D. 1995).

With respect to whether the violations were widespread enough to constitute a waiver, the trial court found as follows:

> No Plaintiff is in compliance with the Single Private Residence Covenant. The land upon which each of their residences sit was originally deeded as a full Lot by Mrs. Mackey. Since that time, those lots have each been subdivided and more than one private residence has been built thereon, violating the Single Private Residence Covenant. Additionally, some of the Plaintiffs have erected structures other than "a private residence" upon their subdivided lots, including detached sheds, garages, and fences. With the vast majority of the full Lots originally deeded by Mrs. Mackey having likewise been subdivided, the erection of additional structures being commonplace, and these violations being readily observable, the owners of land in University Heights – who have, apparently for decades, taken no action to prevent such violations or to enforce the restrictive covenant against violating landowners – have, by their inaction, acquiesced in continuous and widespread violation of the restrictive covenant.

The trial court similarly found widespread waiver of the Materials Covenant. Because it found the Materials Covenant, Single Private Residence Covenant, and Setback Covenant are tied together, it found them all unenforceable due to widespread waiver of their enforcement.

Here, every Appellant seeking enforcement of the covenant scheme is in open and obvious violation of one or more of the restrictive covenants. We agree with the trial court that, in accordance with other Missouri case law on the issue, such uniform noncompliance is significant enough to constitute waiver of the covenant scheme. *See* ***Blue Ridge Bank and Trust Co. v. Trosen***, 309 S.W.3d 812, 817 (Mo. App. W.D. 2010) (homeowners' association and its members had waived their rights related to intrafamily transfers of property through their repeatedly allowing persistent violations of the provision over an extended period of time). *See also* ***Gibbs v. Cass***, 431 S.W.2d 662, 670 (Mo. App. E.D. 1968) (abandonment and waiver of restrictive covenant preventing subdividing lots found where 40-45% of the lots had been subdivided). Point II is denied.

Points III and IV: Appellants Fail to Establish the Necessary Steps for an Against-the-Weight-of-the-Evidence Challenge

Because Appellants' Points III and IV fail for the same reason, we address them together. In their third point, Appellants argue:

> The trial court erred in holding the Single Private Residence Covenant is unenforceable because the trial court's finding of widespread waiver of the Single Private Residence Covenant is against the weight of the evidence in that the evidence at trial demonstrated widespread and historical compliance with and reliance on the Single Private Residence Covenant.

In their fourth point, Appellants claim:

> The trial court erred in holding the Covenants are unenforceable because the trial court's finding of no benefit to Appellants and hardship to BK&M, LLC arising from enforcement of the Covenants is against the weight of the evidence in that the evidence at trial demonstrated widespread and historical benefit to Appellants with no or wholly avoidable hardship to BK&M, LLC arising from enforcement of the deed covenants.

In both points, Appellants have failed to establish the necessary steps for an against-the-weight-of-the-evidence challenge.

> [A]n against-the-weight-of-the-evidence challenge requires completion of four sequential steps:
>
> (1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
>
> (2) identify all of the favorable evidence in the record supporting the existence of that proposition;
>
> (3) identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit; and,
>
> (4) demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.

Houston v. Crider, 317 S.W.3d 178, 187 (Mo. App. S.D. 2010).

> "[A]dherence to [*Houston*'s] analytical framework is mandatory ... because it reflects the underlying criteria necessary for a successful challenge—the absence of any such criteria, even without a court-formulated sequence, dooms an appellant's challenge." *Est. of Collins by & through Collins v. Collins*, 648 S.W.3d 871, 878 (Mo. App. [S.D.] 2022) (alterations in original) (quoting *Robinson v. Loxcreen Co.*, 571 S.W.3d 247, 251 (Mo. App. [S.D.] 2019)).

Bell-Kaplan v. Schwarze, 712 S.W.3d 836, 846 (Mo. App. S.D. 2025).

Neither of Appellants' points set forth, or apply, the aforementioned steps required in an against-the-weight-of-the-evidence challenge. While the points identify a challenged factual proposition — the trial court's finding of widespread waiver of the Single Private Residence Covenant (Point III), and the Covenants are unenforceable because the trial court's finding of no benefit to Appellants and hardship to BK&M (Point IV) – they fail to identify all the favorable evidence in the record that supports these propositions. For example, while Appellants claim that the trial court found that Appellants had waived or abandoned their right to enforce the restrictive covenants because "some" Appellants built sheds or fences on their lots, they fail to state that the trial court found that "No [Appellant] is in compliance with the Single Private Residence Covenant."

Similarly, Points III and IV fail to identify evidence in the record contrary to belief in the identified proposition, and specifically fail to resolve conflicts in the testimony in accordance with the trial court's credibility determinations. For example, Appellants continue to argue that Mrs. Mackey's intent was to create a residential development of single-family dwellings wherein the lots would later be subdivided; a finding which is contrary to the trial court's credibility findings.

Having "never [made] it out of the starting gate[,]" Appellants' Points III and IV must fail. ***Id.*** (quoting ***Turner v. Jordan***, 655 S.W.3d 791, 795 (Mo. App. S.D. 2022)).

Point V: Whether Appellants have Standing to Challenge the Restrictive Covenants is Moot

In their fifth point on appeal, Appellants claim as follows:

> The trial court erred in holding Erinn & Doug Johnson, Squires, Wealand, and Waddell lack standing because the trial court erroneously applied the law of standing in that it held the named parties could not maintain the action in a representative capacity for revocable trusts.

We decline to exercise our jurisdiction to address Point V because it is moot.

"Mootness implicates the justiciability of a controversy and is a threshold issue [for] appellate review," which this Court may decide *sua sponte*. ***D.C.M. v. Pemiscot Cnty. Juv. Off.***, 578 S.W.3d 776, 780 (Mo. banc 2019) (quoting ***Mo. Mun. League v. State***, 465 S.W.3d 904, 906 (Mo. banc 2015)). "When a question presented for decision could not have any practical effect upon any then existing controversy, the question is moot." ***Smith v. State ex rel. Rambo***, 30 S.W.3d 925, 930 (Mo. App. S.D. 2000).

Because we hold herein that the trial court correctly determined that the restrictive covenants are unenforceable, any error with respect to whether Erinn and Doug Johnson, Squires, Wealand, and Waddell have standing to challenge the restrictive covenants would have no practical effect on the outcome of the case. Having already decided that the covenants are not enforceable, there is no "existing controversy" to address. ***Id.*** This Court therefore declines to exercise its jurisdiction to decide on the question presented by Appellants' Point V.

The judgment of the trial court is affirmed.

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

MATTHEW P. HAMNER, J. – CONCURS

BRYAN E. NICKELL, J. – CONCURS